

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO. 878 OF 2013

Shri Kashinath Sampat Ugate & ors. .. Applicants

Vs.

Muktaji Gopal Pagar & ors. .. Respondents

Mr.Sachin Gite, for Applicants.

Mr.Vivek Salunke, for Respondent Nos.1 to 6.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

The Applicants challenge the order passed by the learned Civil Judge Senior Division Nashik dated 24 July 2013 rejecting the application filed by the Applicants under Order VII Rule 11 of the Code of Civil Procedure.

2. Heard learned counsel for the parties.

3. The learned counsel for Applicants submitted that the suit filed by Respondents-Plaintiffs is not maintainable in view of bar of provisions of section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948. He submitted that the order which is challenged by the order dated 31 January 2013 passed by Tahsildar Dindori which is challenged by Respondents-Plaintiffs in the suit has been

confirmed by tenancy authorities as well as learned Single Judge of this Court by dismissing the writ. He submitted that the Respondents-Plaintiffs are bound by said adjudication and therefore, cannot contend that the order is bad in law. He submitted that what is being sought in the suit is adjudication of tenancy rights which can be done only by tenancy authorities as per the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. He submitted that there is a remedy of appeal against the order passed by the Tahsildar and therefore, a separate suit is not permissible. The learned counsel for the Respondents-Plaintiffs relied upon the decision of the Division bench of this Court in the case of *Husein Miya Dosumiya v. Chandubhai Jethabai and another* – A.I.R. 1954 Bombay 239.

4. In application under Order VII rule 11 what is to be seen is the plaint. In the plaint it is averred that pursuant to a partition of the year 1996, the property has come to the share of Respondents-Plaintiffs however inspite of this position no notice was given to the Respondents-Plaintiffs of the proceedings before Tahsildar deliberately and an order of directing of handing over possession was issued without notice to the Respondents-Plaintiffs. It is therefore, alleged that such action is in violation of principles of natural justice and is void and not binding on the Respondents-Plaintiffs. In the case of *Husein Miya*, the Division bench of this Court observed that the suit may be entirely frivolous or vexatious or there may not be any

merit, yet to ascertain whether suit can be held as not maintainable, what is to be seen is the plaint. The suit which complains of an ultra-vires order is maintainable and it is not necessary that an appeal has to be filed by a party. This position of law has been followed subsequently in various decisions. On reading the plaint as it is then it cannot be said that the suit is not maintainable at the threshold. Clear breach of principles of natural justice have been alleged and nothing is shown that prima facie notice was given to the Respondents-Plaintiffs. However, it is clarified that after the evidence is over, that if the learned Judge comes to the conclusion that the suit cannot be decided without adjudicating the tenancy rights, at that stage also it will be open to the learned Civil Judge to consider the bar of Section 85 of the Act. Even while passing the impugned order the learned Civil Judge has clarified that the application does not fall within the ambit of Order VII rule 11 of the Code which adjudication has to be based on the averments made in the plaint.

5. In view of what is observed above, there is no jurisdictional error in the view taken by the learned Civil Judge. Revision Application need not be entertained. With the clarification as above, the Revision Application is rejected.

(N.M.Jamdar, J.)